IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 4487 OF 2006
IN
SUIT NO. 2779 OF 2006

M/s.Housing Development Finance Corporation Ltd., .. Plaintiff.

V/s.

Mr.Bhore RajaBhau Vishnu & Ors. .. Defendants.

Ms.Nipa Singh i/by M/s. Mahesh Menon & Co. for the Plaintiff.

CORAM : S. A. BOBDE, J.

DATED : 23rd JANUARY, 2007.

P.C.:

. The learned counsel for the Plaintiff has tendered an affidavit of service, which discloses that the defendant No.1b is served; but the attempts to serve the defendants Nos. 2 and 3 are failed because the notices/packets have been returned back with an endorsement that the person was not there at the delivery time. and address not found. The counsel for the plaintiff, however, submits that the defendants Nos.2 and 3 had been served in the earlier Notice of Motion No. 3637 of 2006 but they did not appear at that stage also. In that motion; on 18th October, 2006 this court passed an ad-interim order in terms of prayers (a)

and (c), except the words bracketed in red with the direction to the court receiver to appoint defendant No.1 as his agent on usual terms and conditions except as to security.

2. Apparently, when the Court Receiver went to the suit flat for executing the said order of this court, the flat was locked and therefore, possession could not be taken. The plaintiff, which is a Housing Finance Company and has given a loan to the defendants, now seeks an order of this court to take forcible possession of the suit flat by breaking open the lock, if necessary, with the help of the local police.

3. Having regard to the circumstances of the case and looking to the conduct of the defendants it is appropriate to allow this notice of motion in terms of prayer clause (a), which reads as follows :

> (a) that pending the final hearing and disposal of the Suit, this Hon'ble Court be pleased to modify its order dated 18th October, 2006, thereby allowing the Court Receiver, High Court, Mumbai to take physical possession and /or forcible physical possession by breaking open the lock and /or in possession of some

third party/tenant/trespasser in the suit premises being two flats viz., Flat No.202 and Flat No.205, 1st Floor, Prabha Park, Building No.1, Wing C, Gut No.39P, B Cabin Road, Morivili Bombay-Pune Highway, Ambernath (E), Thane, with or without the help of local police personal/station in whose jurisdiction the suit premises is situated and make inventory of and attach all articles lying and being in the suit premises and take necessary steps required to protect the suit premises;

4. Order accordingly. Motion stands disposed of.

(S.A.BOBDE,J.)

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